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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92046357
Party	Defendant Education Corporation of America Education Corporation of America 65 Bagby Drive, Suite 100 , IL 35209
Correspondence Address	Education Corporation of America 300 Riverhills Business Park Suite 300 Birmingham, AL 35242 UNITED STATES ebranum@maynardcooper.com
Submission	Motion to Amend/Amended Answer or Counterclaim
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Date	01/03/2007
Attachments	Culinard Amended Answer.pdf (4 pages)(78857 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before The Trademark Trial and Appeal Board

In the matter of U.S. Registration No. 2,485,231
For the mark CULINARD THE CULINARY INSTITUTE OF VIRGINIA COLLEGE
Registered on the Principal Register on September 4, 2001

ECPI Colleges, Inc.

Petitioner

v.

Education Corporation of America

Registrant

Cancellation Number 92,046,357

I hereby certify that the original of this First Amended Answer and Affirmative Defenses to Petition to Cancel is being electronically filed with the Trademark Trial and Appeal Board of the United States Patent and Trademark Office through the web site at <http://esita.uspto.gov> on January 3, 2007.

/emily g branum/
Emily G. Branum

FIRST AMENDED
ANSWER AND AFFIRMATIVE DEFENSES TO PETITION TO CANCEL

Registrant, Education Corporation of America (hereinafter "Registrant"), through its attorneys, hereby answers the allegations set forth in the Petition to Cancel (hereinafter the "Petition") filed by Petitioner, ECPI Colleges, Inc. (hereinafter "Petitioner"), as follows:

With respect to Petitioner's individually numbered paragraphs:

1. Registrant is without knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraph 1 of the Petition, and therefore denies the same.
2. Registrant is without knowledge or information sufficient to form a belief with respect to the allegations contained in Paragraph 2 of the Petition, and therefore denies the same.
3. Registrant denies the allegations set forth in Paragraph 3 of the Petition.
4. Registrant admits that it does not offer courses in food preparation in the Commonwealth of Virginia; Registrant's courses are not primarily focused on the cuisine of the Commonwealth of Virginia; and Registrant's courses in food preparation are presently only

offered in Birmingham, Alabama. Registrant denies the remaining allegations set forth in Paragraph 4 of the Petition.

5. Registrant admits that it does not offer courses in food preparation in the Commonwealth of Virginia; Registrant's courses are not primarily focused on the cuisine of the Commonwealth of Virginia; and Registrant's courses in food preparation are presently only offered in Birmingham, Alabama. Registrant denies the remaining allegations set forth in Paragraph 5 of the Petition.

6. Registrant denies the allegations set forth in Paragraph 6 of the Petition.

GENERAL DENIAL

Each specific allegation by Petitioner not expressly admitted herein is hereby denied.

AFFIRMATIVE DEFENSES

1. Petitioner fails to state a claim upon which relief may be granted because the mark Petitioner proposes to register (Serial No. 76/655454) is geographically descriptive and generic and therefore not entitled to registration.

2. Petitioner's claims are barred by the doctrine of laches.

3. Petitioner's claims are barred by the doctrine of waiver.

4. Petitioner's claims are barred by the doctrine of estoppel.

5. Petitioner's claims are barred by the doctrine of acquiescence.

6. Petitioner's claims are barred for lack of conditions precedent.

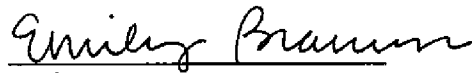
7. Petitioner lacks proper standing to bring the claims set forth in the Petition because the mark Petitioner proposes to register (Serial No. 76/655454) is geographically descriptive and generic and therefore not entitled to registration.

8. The mark Petitioner seeks to cancel is valid, duly subsisting and constitutes prima facie evidence of registrant's exclusive right to use such mark in commerce for and in connection with the services specified in the Certificate of Registration issued with respect to such mark.

9. Registrant states that it has, or may have, further and additional affirmative defenses which are not yet known to Registrant, but which may become known through future discovery. Registrant therefore asserts each and every affirmative defense as may be ascertained through future discovery herein.

WHEREFORE, Registrant respectfully requests that the Petition be dismissed with prejudice.

Respectfully submitted this 3rd day of January 2007.



Emily G. Branum
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Attorneys for Education Corporation of America

I hereby certify that a true and complete copy of the foregoing, Registrant's Answer and Affirmative Defenses to Petition to Cancel, has been served upon Petitioner to:

Peter E. Broadbent, Jr.
Christian & Barton, LLP
909 East Main Street
Suite 1200
Richmond, Virginia 23219

via First Class United States Mail, adequate postage prepaid, on this 3rd day of January 2007.



Emily G. Branum